

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 834 of 1979

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5: No

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AJIT KESHAVJEE RAMJEE

Versus

SHETH CHANDRAVADAN RAMANLAL  
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Appearance:

MR RN SHAH for Petitioner

MR MUKESH PATEL, AGP, for Opp. No. 5  
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CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 10/03/2000

ORAL JUDGEMENT

The appellant before this court has challenged the validity of an order passed in Misc. Application No. 342/77 by the City Civil Court, Ahmedabad dated 10th July 1978 in this appeal.

2. Short facts leading to the present appeal are as under:-

3. A public trust known as Ramji Lakhmidas and Odhavji Lakhmidas Trust has been registered at P.T.R. No. A-117 at Bombay and it has also been registered with the Charity Commissioner, Gujarat at P.T.R. No. A/G 1882. One of the trustees of the trust named Shri Pragji Mathuradas had submitted his resignation on 21st October 1970 and, therefore, upon vacancy being created, Shri Dwarkadas Liladhar, opponent No. 4 herein, was taken up as a trustee by the trust. Change report was submitted to the Charity Commissioner, Bombay which was accepted by him. Another change report was submitted to the office of the Charity Commissioner, Ahmedabad, before the Deputy Charity Commissioner who had objected to acceptance of Shri Dwarkadas Liladhar as trustee as, according to his information, appointment of Shri Dwarkadas Liladhar was not as per Clause 7 of the scheme under which the trust was constituted. As per Clause 7 of the scheme, before appointment of a trustee, previous approval in writing of the concerned Charity Commissioner was a must. As the said condition had not been fulfilled, the Deputy Charity Commissioner rejected the application submitted by the trust for the purpose of including name of Shri Dwarkadas Liladhar as a trustee in the relevant register under the provisions of the Bombay Public Trusts Act, 1950. Being aggrieved by the said order, Appeal No. 80/76 was filed before the Joint Charity Commissioner. The said appeal was allowed by the Jt. Charity Commissioner by an order dated 31st May 1977. Being aggrieved by the said order, the present appellant had filed Misc. Application No. 342/77 in the City Civil Court at Ahmedabad for challenging the said order.

4. Misc. Application No. 342/77 was rejected by an order dated 10th July 1978 and being aggrieved by the said order, the present appellant has approached this court with the present appeal.

5. I have heard learned advocate Shri RN Shah appearing for the appellant. He has vehemently submitted that it was not just and proper on the part of the Joint Charity Commissioner and the City Civil Court, Ahmedabad to interfere with the order passed by the Deputy Charity Commissioner which was just and proper for the reason that the condition incorporated in Clause 7 of the scheme under which the trust was constituted had not been fulfilled when Shri Dwarkadas Liladhar i.e. opponent No. 4 herein was appointed as a trustee of the trust named

hereinabove. It has been submitted by him that upon perusal of clause 7 of the scheme, it is very clear that only after obtaining previous approval in writing of the Charity Commissioner a person could have been appointed as a new trustee in place of a trustee who expires or resigns. It has been submitted by him that it is not in dispute that before appointment of Shri Dwarkadas Liladhar as a trustee of the trust, no approval in writing was obtained from the Charity Commissioner and, therefore, opponent No. 4 i.e. Shri Dwarkadas Liladhar could not have been appointed as a trustee of the trust. He has submitted that the order passed by the Dy. Charity Commissioner was just, legal and proper and the said order should not have been disturbed by the Jt. Charity Commissioner in appeal and by the City Civil Court, Ahmedabad.

6. I have heard learned advocate Shri RN Shah and have also perused the relevant papers. Upon perusal of the relevant papers, it is very clear that the trust has been registered in the State of Maharashtra as well as in the State of Gujarat. The Charity Commissioner, Bombay has already given his approval to appointment of Shri Dwarkadas Liladhar as a trustee of the trust. An anomalous situation would be created if a trust which has been registered at two places and one of the charity commissioners gives approval to appointment of a trustee whereas another charity commissioner does not give consent to appointment of the concerned person as a trustee. Upon perusal of Clause 7 of the scheme, though it is clear that previous approval in writing of the Charity Commissioner is required for the purpose of appointment of a person as a trustee of the trust, it appears that by considering the said clause to be highly technical and as its violation was not against the interest of the trust, the Charity Commissioner, Bombay had given his consent but the Deputy Charity Commissioner, Ahmedabad did not give consent on this technical ground. The Jt. Charity Commissioner in appeal as well as the City Civil Court, Ahmedabad, have taken broader view and have not preferred to be technical as the Deputy Charity Commissioner, Ahmedabad had become.

7. I am in agreement with the views expressed by the Joint Charity Commissioner and the City Civil Court, Ahmedabad, that an anomalous situation would be created if approval is not accorded to appointment of Shri Dwarkadas Liladhar i.e. opponent No. 4 herein as a trustee of the trust. In the circumstances, I do not find any illegality in the impugned order passed by the City Civil Court, Ahmedabad, in Misc. Application No.

342/77 whereby the order passed in Appeal No. 80/76 by the Jt. Charity Commissioner had been confirmed.

8. For the reasons recorded hereinabove, this appeal is dismissed with no order as to costs.

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